

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN WAYS, JR.

Defendant.

8:12CR391

ORDER

This matter is before the court on defendant John Ways, Jr.'s motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#), [Filing No. 755](#). He challenges his conviction after a jury trial, and sentence for conspiracy to sell drug paraphernalia, conspiracy to distribute and possession with intent to distribute a schedule I controlled substance, money laundering, and felon in possession of ammunition. [Filing No. 623](#), Judgment. He was sentenced to concurrent terms of imprisonment of 36 months, 180 months, 180 months, and 120 months. *Id.* He appealed his conviction and sentence. The convictions on the intent to distribute and money laundering were affirmed, but the conviction for felon in possession was vacated. [Filing No. 707](#), [Filing No. 716](#), Amended Judgment. The present motion is Way's first motion under [28 U.S.C. § 2255](#).

A prisoner who moves to vacate his sentence under § 2255 must show that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose such sentence, that the sentence was in excess of the maximum authorized by law, or that it is otherwise subject to collateral

attack. [28 U.S.C. § 2255](#). ¹Under the Rules Governing Section 2255 Proceedings for the United States District Courts (“2255 Rules”), the court must perform an initial review of the defendant’s § 2255 motion. See [28 U.S.C. § 2255](#); Rule 4(b). The rule provides that unless “it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court,” the court must order the United States Attorney to respond to the motion. *Id.*

On initial review, the court cannot say with certainty that the plaintiff is entitled to no relief. Accordingly, the government should be required to answer. On receipt of the government’s answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant’s claims may be resolved on the basis of the record and briefs, or (b) whether evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED THAT:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant’s § 2255 motion within 21 days of the date of this order.

Dated this 5th day of June, 2018.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge

¹ The defendant states 107 grounds to support his § 2255 motion. The government should feel free to group these allegations in whatever way it makes the most sense.